IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE
WRIT PETITION NO. 2316 OF 2003

1. The Head Master,
Abasaheb Atre Night School &
Junior College, 352, Somwar Peth,
Pune 411 011.

2. Rasta Peth Education Society's
Abasaheb Atre Night High School
& Junior College, 352, Somwar
Peth, Pune 411 011. ... Petitioners

Versus

1. Mrs. Anjali Balkrishna Rakshe,
16, Geetanjali Apartments,
Ideal Colony, Kothrud,
Pune 411 029.

2. The Education Officer,
Zilla Parishad,
Pune.
(To be served through Additional
Government Pleader's Office,
Mumbai.)

3. The Deputy Director of
Education, Pune,
Pune Division, Pune 411 001.

4. Mr. M.V. Deshpande,
The Presiding Officer,
School Tribunal, Pune Region,
Pune 411 001. ... Respondents.

Mr. K.S. Bapat and Mr. Nitin A. Kulkarni for
Petitioners.

Mr. S.V. Pitre for Respondent No. 1.

Mr.M.H. Solkar, A.G.P. for Respondent Nos. 2 and 3.

CORAM : F.I. REBELLO,J.
DATED : FEBRUARY 07, 2005

ORAL JUDGMENT :

. The Petitioner is a Head Master of the school run by Respondent No. 2 who has preferred this petition against the order of the Presiding

Officer, School Tribunal in Appeal No. 237 of 1994 dated 30.9.2002. By that order the Respondent No. 4 allowed the appeal preferred by Respondent No. 1 and set aside the notice of termination dated 30.9.1994. The Respondents were further directed to reinstate the Appellant as part time teacher with effect from 30.11.1994 with full back wages. There is further recommendation to the State Government that the backwages directed to be paid to the Appellant may be deducted from the grant due and payable to the management and be paid to the employee directly.

. A few facts may be noted.

. There is no dispute that the Respondent No. 1 was in the employment of the school. The case of the Petitioners is that the Education Officer by his letter dated 17.1.1995 directed the Principal that from Jan. 1995 the wage scales should be prepared as per the wage scale fixed by the Education Officer, Zilla Parishad regarding the teachers and the employees other than the teachers. There is further direction in the said letter not to draw the Wage Scales for the excess two teachers/employees. From the records available it is clear that the Management by letter of 30.11.1994 informed one Mr. D.N. Acharya, working as temporary teacher that in pursuance to letter

received from Deputy Director of Education, Pune and Education Officer, Pune Zilla Parishad, one division each for the standard VIII and IX has been reduced from the year 1994-95. The teacher was informed as two divisions has to be closed down there is a reduction in the number of teachers also. He was therefore, informed that his service will be terminated with effect from 31.12.1994. Similarly the Management issued notice to the Petitioner herein and one another by name Shri. Ballal S.E. whose services were terminated on account of reduction of division from 28.2.1995. It is this order which was subject matter of challenge before the tribunal.

. There is no dispute that the Petitioner was a permanent teacher. It is further not disputed that in cases where teacher is declared surplus as per policy and rules in force, the teacher has to be kept on the role of the establishment of the school where the teacher was working untill re-deployed or posted on some other post and untill such time entitled to draw wages from the school where he is declared as surplus. The case of the Petitioner is that the Respondents have absorbed amongst others Shri. Archarya D.N. a temporary assistant teacher.

. The learned School Tribunal after rejecting

preliminary objection that the appeal was not maintainable because the teacher was part time, held that even if the petitioner was to be retrenched, the petitioner ought to have been absorbed and that the Education Officer and Deputy Director office cannot adopt pick and choose method. The further finding is recorded that in so far as Mr. Ballal is concerned, he had been absorbed in Chintamani Prashala, Chinchwad. It was then submitted before the tribunal that the performance of the teacher was not satisfactory. That was rejected by holding that there was no material nor was any enquiry conducted.

. It is this order which is subject matter of the challenge. In so far as challenge to retrenchment is concerned, we find that there can be no fault with the ultimate order passed by the tribunal. The Petitioners however are not entirely right in contending that they had no choice but to terminate the services as they were asked to do so by the Respondent No. 3 and that they have only acted on the directions of Respondent No. 3. By letter of 24.10.1994 the Education Officer had informed the Principal that in so far as permanent employees are concerned, their wages should be drawn from the school till they are absorbed. That however, to my mind will have not much bearing on the matter.

. After having heard learned counsel for the parties, I am of the opinion that there is merit in the said contention. Even if the teacher was found to be surplus, he could not have been terminated but his name ought to be retained on the muster roll till such time as he was absorbed in another school pursuant to the order of Respondent Nos. 3 and 4.

. Considering above, the following order :

. The impugned order dated 30.09.2004 to the extent it has directed reinstatement is not interfered with. Recommendation however to the Government to deduct the wages from the grant due and payable to the Management is set aside. Respondent Nos. 2 and 3 are directed to release the salary grant in favour of Respondent No. 1 untill such time Respondent No. 1 is absorbed in another school or till superannuation. On behalf of the Petitioner the learned counsel states that the Petitioner would be claiming only 50% of the wages from the date that was due till absorption or superannuation. Statement accepted.

. Rule made partly absolute accordingly. No order as to costs.

(F.I.REBELLO,J.)